Supreme Court, U.S.
FILED
SEP 26 1994
OFFICE OF THE CLERK

No. 94-297

In The

Supreme Court of the United States

October Term, 1994

BRIAN M. PURICELLI,

Petitioner,

vs.

MORRISVILLE BOROUGH, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS WRIGHTSTOWN TOWNSHIP, GEORGE DONAT, KEN CRONLUND, YARDLEY BOROUGH, SUSAN TAYLOR AND EDWARD ROBINSON

WILLIAM F. HOLSTEN, II
Attorney for Respondents
Wrightstown Township, George Donat,
Ken Cronlund, Yardley Borough,
Susan Taylor and Edward Robinson
One Olive Street
Media, Pennsylvania 19063
(610) 566-8800

5714
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
Counterstatement of the Case	1
Summary of Argument	5
Reasons for Denying the Writ	6
Conclusion	8

TABLE OF CITATIONS

Cases Cited:

Paul v. Davis, 424 U.S. 693, 47 L. Ed. 455, 96 S. Ct. 1155 (1976)	5, 6
Scheetz v. Morning Call, Inc., 946 F.2d 202 (3rd Cir. 1991), *cert. denied,* 112 S. Ct. 1171 (1992)	6

Statutes Cited:

18 U.S.C. § 5021(b)	1
Police Tenure Act of June 15, 1951, P.L. 586, 53 P.S. § 811, *et seq.*	8

United States Constitution Cited:

First Amendment	5, 7
Fourth Amendment	5, 7
Fourteenth Amendment	6

Contents

Page

Rule Cited:

Supreme Court Rule 10 6

COUNTERSTATEMENT OF THE CASE

Between 1979 and 1989, Puricelli, worked as a part-time police officer for Wrightstown Township and the Boroughs of Yardley and Morrisville. Puricelli alleges that the causes of action arose while he was employed by these police departments.

Puricelli worked as a part-time police officer for the Borough of Morrisville ("Morrisville") from 1979 to 1984 when he was discharged.[1] When he applied for employment with Morrisville, Puricelli stated on his employment application that he had been arrested, convicted and had served a term of probation for possessing a controlled substance.[2] Chief Merker ("Merker") of the Morrisville police force investigated and fleshed out the circumstances surrounding Puricelli's arrest.

In February 1984, after his discharge from the Morrisville police force, Puricelli applied for and received a part-time position with the Wrightstown Township ("Wrightstown") police force.

---

1. The Morrisville police force terminated Puricelli in January of 1984. (Puricelli Depo. of 7/2/91 at 10).

2. On July 19, 1976, Puricelli was arrested in Texas and charged with the possession of marijuana with the intent to deliver. Puricelli was convicted of these charges and received two years of probation. On November 16, 1978, Judge Hannum, of the Eastern District of Pennsylvania, entered an order discharging Puricelli from probation and setting aside his conviction pursuant to 18 U.S.C. § 5021(b). On April 14, 1983, Judge Hannum denied Puricelli's request to expunge his criminal record and ordered that Puricelli's records, maintained by the Federal Bureau of Investigation, be removed from the central criminal file and placed in a separate storage facility. Pursuant to this order, these records may not be opened "unless the Federal Bureau of Investigation determines they are needed in the course of a *bona fide* criminal investigation . . . the United States [may] not disseminate these records to anyone . . . for any purpose other than as set forth above." Judge Hannum further ordered the F.B.I. to delete Puricelli's criminal record from the computer and the Eastern District of Pennsylvania to seal its records pertaining to Puricelli.

(Puricelli Depo. of 7/2/91 at 82-83). During his tenure with the Wrightstown police force Puricelli and Chief Walter Hughes ("Hughes") became embroiled in several disputes.[3] Despite their differences, Puricelli worked for Wrightstown until September 1988 when he moved to Michigan to begin law school.[4] The Wrightstown police force disbanded on December 31, 1988.

During the last six months of his employment with Wrightstown, Puricelli became the subject of a criminal investigation involving an investigatory grand jury. This investigation, conducted by Dale Reichley, an assistant district attorney for Bucks County and Detectives Brosha and Armitage, also of the Bucks County District Attorney's office, centered upon Puricelli's possible involvement in the alleged mishandling of abandoned cars in the area.[5] The investigation did not result in the

---

3. According to Puricelli, their troubles began when Hughes asked Puricelli to fix a ticket. Puricelli refused and reported this request to Alan Rubenstein ("Rubenstein"), the Bucks County District Attorney. (Puricelli Depo. of 7/2/91 at 85-87). Hughes then began cutting Puricelli's work hours. (*Id.* at 89-92). Eventually, both men contacted the Bucks County District Attorney's office and other law enforcement agencies to lodge complaints about each other. These complaints resulted in an investigation of Puricelli and his involvement in an allegedly unlawful abandoned car scheme but did not result in any investigation of Chief Hughes' supposedly improper conduct.

4. Puricelli maintains that he obtained an educational leave of absence from Ken Cronlund, a member of the Wrightstown Board of Supervisors. (Puricelli Depo. of 7/2/91 at 168). However, on November 30, 1988, Terry Clemons, solicitor for Wrightstown, sent Puricelli a letter which stated that "the Township considers your dropping off your keys at the Township Police Department in August of 1988 and not making yourself available for police duty, is an effective resignation from the Wrightstown Township Police Department."

5. In September 1987, Hughes granted Puricelli permission to establish and maintain an abandoned vehicle and towing file for the Wrightstown police force. (Puricelli Affidavit of 8/19/92 at ¶ 4). In February 1988, a member of the

(Cont'd)

filing of any charges against Puricelli or in his arrest, and the investigatory grand jury disbanded without indicting him. However, during the course of the investigation, Hughes, Reichley, Brosha and Armitage interviewed law enforcement officers and other members of the community about Puricelli and discussed with them Puricelli's criminal record and his status as the subject of a grand jury investigation.[6]

(Cont'd)
community contacted Hughes about a car that was in the possession of an automobile salvage business owned by Donald Garner, plaintiff in the related case of *Garner v. Township of Wrightstown et al.*, 90 CV-1228. Hughes knew that Garner and Puricelli were friends and that Puricelli helped Garner with the paperwork for his business. (Puricelli Depo. of 10/22/91 at 71; Report prepared by Detective Brosha). Hughes searched the police files to determine what action the Wrightstown police force took concerning the car in issue. (Brosha Report). While searching the files, Hughes noticed Puricelli's signature on a large number of abandoned vehicle reports and that Puricelli had not included the usual paperwork as required by the Wrightstown police force's procedures for handling vehicles abandoned within its borders. (Brosha Report).

6. During the course of his own investigation, Hughes contacted James O'Neill, supervisor for the Yardley police department, Robert Cressman, a member of the Wrightstown police force and Martin Duffy, chief of police for Newtown Township. (*See* Affidavits of O'Neill, Cressman and Duffy). In particular: (1) Hughes asked O'Neill if he was going to fire Puricelli because of the grand jury's investigation into the abandoned car scheme; (2) Hughes talked about Puricelli at a Wrightstown police force meeting and told Cressman about Puricelli's drug conviction and his involvement in the alleged abandoned car scheme; and (3) Hughes spoke with Duffy about Puricelli's alleged involvement in an illegal method of disposing of abandoned cars. (O'Neill Affidavit at ¶ 19, Cressman Affidavit at ¶¶ 8, 9(b) and Duffy Affidavit at ¶ 2).

During the course of the investigation conducted by the Bucks County District Attorney's office, Reichley, Brosha and Armitage also met with other police officers and community members and told them of Puricelli's criminal record and the grand jury investigation. In particular, Brosha met with O'Neill,
(Cont'd)

In 1987, Puricelli obtained part-time employment with the Borough of Yardley ("Yardley") police force. (Puricelli Depo. of 7/2/91 at 182). He worked for Yardley until July 1989 when he was suspended because of a complaint filed against him by Susan Taylor, a defendant in this action and then a member of the Yardley Borough Council.[7]

During 1988, Puricelli again sought employment with the Morrisville police force. (Puricelli Depo. of 7/2/91 at 55). Although he received the top score on the civil service examination, Puricelli failed the psychological examination and consequently did not receive a position with the police force. (Puricelli Depo. of 10/22/91 at 193).[8]

(Cont'd)

told him that Puricelli should not be a police officer because he was a "convicted drug dealer" and asked to see Puricelli's personnel file. (O'Neill Affidavit at ¶ 6). O'Neill refused to let him do so and Brosha returned with a subpoena compelling O'Neill to appear before the grand jury with the personnel file. (*Id.* at ¶¶ 10, 13). Also, Reichley and Armitage met with Cressman and told him that Puricelli and Garner were running a chop shop and that Puricelli was a convicted drug smuggler. (Cressman Affidavit at ¶ 2(d)).

7. Edward Robinson, then the Mayor of Yardley and a defendant in this action, suspended Puricelli and a fellow arresting officer after they arrested and filed criminal charges against Taylor for possession of a controlled substance and driving under the influence of alcohol and a controlled substance. (Puricelli Depo. of 7/2/91 at 204; James O'Neill's Affidavit at ¶¶ 26-27).

8. Puricelli challenged his failure to receive this position at a hearing before the Civil Service commission, held at his request. (Puricelli Depo. of 10/22/91 at 193, 212). The Civil Service Commission issued a letter to Puricelli in which it stated that his name was removed from the list of eligible candidates for employment with the Morrisville police force. (Puricelli Depo. of 10/22/91 at 195).

SUMMARY OF ARGUMENT

Puricelli failed to meet the "reputation plus" test of *Paul v. Davis*, 424 U.S. 693, 47 L. Ed. 455, 96 S. Ct. 1155 (1976) and thus his claims against defendants amounted to nothing more than a defamation claim.

The trial court properly rejected Puricelli's claim that his constitutional right of privacy was violated by defendants when his criminal record was disseminated on the grounds that Puricelli's criminal record was a legitimate public concern, and that such information is not entitled to privacy protection.

The right of privacy issue was not properly raised on appeal; thus, the Court of Appeals refused to address that issue.

Puricelli has waived any violation of his First Amendment rights by failing to properly raise them before the trial or appellate courts. Also, Puricelli's Fourth Amendment claim was not raised before the appellate court, and it is deemed waived.

Similarly, Puricelli failed to properly raise his malicious prosecution/abuse of process claim to the appellate court and it should also be considered waived. The District Court properly held that mere investigation into Puricelli's suspected criminal activity, without arrest or indictment, was insufficient to support a claim for either malicious prosecution or abuse of process.

The Court of Appeals affirmed the trial court's decision that Puricelli's claim that the trial judge should have recused herself was untimely, and improperly made and substantively without merit. By failing to raise the diversity issue before the District Court or the Court of Appeals, Puricelli has waived his right to raise it now.

Puricelli's claim with respect to his Fourteenth Amendment right to procedural due process was not properly raised before the appellate court and is deemed waived. Furthermore, Puricelli failed to establish that he had a protected property interest in his employment as a part-time police officer.

REASONS FOR DENYING THE WRIT

Puricelli is asking this Honorable Court not to expand the "reputation plus" test set forth in *Paul v. Davis*, 424 U.S. 693 (1976), but to eliminate the "plus" element of that test altogether. Since Puricelli has failed to convince either the District Court of the Third Circuit Court of Appeals that he had anything more than a defamation claim without any tangible injury which could be attributed to any defamatory remarks, he now asks that the evidence of actual injury, or the "plus" part of the test be eliminated. The Third Circuit, in affirming the District Court's decision, did not depart from accepted judicial procedure, but merely correctly applied the "reputation plus" test of *Paul v. Davis*, *supra*. Puricelli gives this Honorable Court no reason to grant his petition under Rule 10 of the Supreme Court Rules.

Puricelli claims that his right to privacy was violated by defendants when an investigation by the grand jury into his possible criminal activity in connection with operating a "chop shop" was begun, and his prior criminal record was disseminated. Puricelli claims the court order sealing his criminal record was directly violated by defendants. The District Court properly dismissed this claim based on the holding in *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202, n. 5 (3rd Cir. 1991), *cert. denied*, 112 S. Ct. 1171 (1992). The District Court opined that the type of information disclosed was not the type of "private" information protected by the United States Constitution, but rather remarkably similar to the information revealed in *Paul v. Davis, supra*. Puricelli has failed to cite any convincing authority for his

contention that his criminal history is constitutionally protected as "private", and therefore, has not given this Honorable Court any reason to review the appellate court's decision on this issue.

Puricelli claims that his First and Fourth Amendment rights were violated by defendants when a criminal investigation against him was commenced because he reported alleged acts of corruption and wrongdoing by the Wrightstown Police Department, were not properly raised before the appellate court. As to his Fourth Amendment claim for malicious prosecution and abuse of process, the District Court properly held that since Puricelli was never arrested, indicted, or charged with a crime, subsequent to the grand jury investigation, Puricelli failed to establish essential elements of those claims. Since Puricelli could cite no case law to the contrary, this Honorable Court has no reason to review this issue.

After the District Court's decision granting summary judgment to all defendants, Puricelli wrote a letter to the judge demanding she recuse herself, based on Alan Rubenstein's limited participation in her unsuccessful campaign for election to the Pennsylvania Supreme Court. The District Court's decision was affirmed by the Third Circuit, finding Puricelli's claim "to be plainly without merit." Puricelli has cited no case law in his present petition to convince this Honorable Court that this issue deserves review.

Puricelli now seeks to have this Court decide his pendent state claims, whatever they may be, on the basis of diversity jurisdiction. Since Puricelli did not heretofore raise this issue, he should be precluded from now doing so.

Puricelli finally argues that he has a protectable property right as a part-time police officer with Wrightstown Township, and his procedural due process was denied. As a second class township

under Pennsylvania law, the Police Tenure Act of June 15, 1951, P.L. 586, 53 P.S. § 811, *et seq.* is the applicable law. Clearly, the record indicates that Puricelli was not a full-time police officer, as is required. Also, Puricelli voluntarily left his employment at Wrightstown to become a full-time law student in Michigan. The Court of Appeals properly concluded that Puricelli had no protected property interest in his employment and that no process due him was denied.

CONCLUSION

In conclusion, Puricelli has given this Honorable Court no compelling reason to grant his petition and we respectfully request this Honorable Court to deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM F. HOLSTEN, II
Attorney for Respondents
Wrightstown Township, George Donat,
Ken Cronlund, Yardley Borough,
Susan Taylor and Edward Robinson
One Olive Street
Media, Pennsylvania 19063
(610) 566-8800